1994

The State of Utah v. Robert Harold Boaz : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
ROBERT HAROLD BOAZ,	:	Case No. 940245-CA Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction for fraudulent offer or sale of securities, a felony, in violation of Utah Code Ann. § 61-1-1; offer or sale of unregistered securities, a felony, in violation of Utah Code Ann. § 61-1-7; and offer or sale of securities by an unregistered agent, a felony, in violation of Utah Code Ann. § 61-1-3(1), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Tyrone E. Medley, presiding.

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JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. section 78-2a-3(2)(f), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony. See also Utah R. Crim. P. 26(2)(a).

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following statutes and constitutional provisions are contained in the text of this brief or in Addendum A:

Utah Code Ann. § 61-1-1
Utah Code Ann. § 61-1-3(1)
Utah Code Ann. § 61-1-7
Utah Code Ann. § 61-1-21
Utah Code Ann. § 76-2-103
Utah Code Ann. § 76-2-304
Utah Code Ann. § 76-3-201
Utah Code Ann. § 76-3-202(5)
Utah Code Ann. § 76-3-203
Utah Code Ann. § 76-3-301

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

Did the trial court misinterpret the securities law penalty provision, which excludes a term of imprisonment for offenders who have no knowledge of the (violated) rule or order, by erroneously sentencing Mr. Boaz to a term of imprisonment when his plea only established a willful, but unknowledgeable, offense?

"When examining a trial court's interpretation of a statutory provision we apply a correction of error standard." State v. Swapp, 808 P.2d 115, 120 (Utah App.), cert. denied, 815 P.2d 241 (Utah 1991); State v. Petersen, 810 P.2d 421, 425 (Utah 1991) ("trial courts do not have discretion to misapply the law"); State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989) (*citations omitted*) (appellate courts "will set aside a sentence imposed by the trial court if the sentence represents an abuse of discretion, if the trial judge fails to consider all legally relevant factors, or if the sentence imposed exceeds the limits prescribed by law").

REQUEST FOR ORAL ARGUMENT AND A WRITTEN OPINION

Utah law recently defined the term, "willful", for purposes of the securities law provisions. State v. Larsen, 865 P.2d 1355 (Utah 1993). Case law has not analyzed, however, whether the punishment of imprisonment must always apply to willful securities law offenders. Under the plain language of the securities law penalty statute, persons who act willfully, but with "no knowledge of the (violated) rule or order", are the lone class of offenders not subject to imprisonment albeit other punishments apply. An opinion is needed to clarify the issue.

STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

This is an appeal from a judgment and conviction for fraudulent offer or sale of securities, a felony, in violation of Utah Code Ann. § 61-1-1; offer or sale of unregistered securities, a felony, in violation of Utah Code Ann. § 61-1-7; and offer or sale of securities by an unregistered agent, a felony, in violation of Utah Code Ann. § 61-1-3(1). See (R 463-73; 579). On February 11, 1994, Mr. Robert Harold Boaz entered a conditional guilty plea to the above offenses, reserving his right to appeal various issues.[1]

On March 21, 1994, following a waiver of the time required for sentencing, the court sentenced "Mr. Boaz to zero to three years in the Utah State Prison on each of the three charges that he pled to[,]" with the terms imposed consecutively. (R 609); cf. infra note 6. The prison terms were stayed, however, in favor of a 36 month period of probation. (R 609-11).

Terms and conditions of probation included 6 months in the Salt Lake County jail with credit given for 14 days served; a

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1. As part of Mr. Boaz's plea agreement, "the state and the Court agree that defendant does not waive his right to appeal the denial of the Motion to Dismiss filed for Lack of Jurisdiction, and accompanying documents and arguments in support thereof, but rather enters pleas conditionally preserving that right of appeal . . ." (R 461). Following a motion, stipulation, and order from this Court, Mr. Boaz reasserted his jurisdictional arguments in a supplemental brief. Mr. Boaz's jurisdictional arguments were advanced personally by him, in propria persona. See, e.g., (R 201-96). The nonjurisdictional arguments herein do not constitute a waiver of jurisdiction but are done pursuant to the representations made below to the court and in the docketing statement. See (R 545) & Motion filed February 6, 1995.

restitution order of $12,000 to Kirk Newman and $5,000 to George Birch (with a hearing provided for in the event of a dispute); 200 hours of community service (monitored by AP&P); and a $250 recoupment fee to the Legal Defender Association. (R 609-10). Pursuant to the parties' statements in the plea agreement, the court stayed the actual execution of its sentence pending disposition of Mr. Boaz's case on appeal. (R 611).

STATEMENT OF THE FACTS

The facts relevant to the sentencing order are alluded to above, but were more specifically addressed at sentencing:

> [DEFENSE COUNSEL]: . . . We would assert that Mr. Boaz would qualify for the treatment of Utah Code Section 61-1-21 wherein no person may be imprisoned for the violation of any rule or order if he proves that he has no knowledge of the rule or order. Simply because Mr. Boaz entered a plea of guilty to the charges, does not inherently mean that he was admitting that was was aware of the rules. As we have discussed extensively during the plea, as well as the Court is aware of the willful standards, willful standards as defined by C. Dean Larsen, which is just the desire to engage in the conduct or cause the result. Mr. Boaz pleaded guilty because there was a scienter element. He never admitted he intended to defraud anybody or he intended to violate any rules or statutes. On the contrary, he has insisted he was unaware of it, his conduct was violative of any rule. He is not educated in this area. He had no knowledge of the intricacies of securities law but based upon the willful standards and lack of scienter, he did enter his plea. We'd ask the Court to consider any form of incarceration inappropriate and the statute takes into consideration that there are individuals who will fall within the purview of violating the securities laws, but would not fall due to their lack of expertise or knowledge or scienter, if you will, would not fall within the punitive sanction of incarceration.

THE COURT: Thank you, [counsel].

[DEFENSE COUNSEL]: Your Honor, I suppose in sum our position would be this Court ought not to impose jail time with Mr. Boaz at all. There are other forms of punishment that this Court could take that would be as effective to Mr. Boaz. It should be noted that he's served 12 days in jail [sic] at this point on this matter; that for someone in his situation, with the kind of background he has, where he has actually been involved in chaplaincies, if you will, and been into prisons before and then [found] himself in this situation. Under the circumstances, . . . [it] has been a punishment in and of itself. It has been quite a bit of embarrassment in his own community with individuals. I believe the recommendation for jail is inappropriate.

The other recommendations, I believe, would accordingly be appropriate. . . .

(R 599-601).

SUMMARY OF THE ARGUMENT

The securities law penalty provision punishes willful and knowledgeable violators with fines and/or imprisonment. "Willful" has been defined by statute and in a securities law decision as the "desire to engage in the conduct or cause the result". Under that narrow definition, Mr. Boaz's plea merely established a "willful" but unknowing violation. By statute, a willful but unknowing violation is less punishable than a willful and knowledgeable violation. The former prohibits imprisonment while the latter does not. Because Mr. Boaz falls under the willful but unknowledgeable situation, the court's order of imprisonment should be vacated.

ARGUMENT

PUNISHMENTS FOR VIOLATIONS COMMITTED WILLFULLY BUT WITHOUT KNOWLEDGE OF THE VIOLATED RULE OR ORDER MAY NOT INCLUDE A TERM OF IMPRISONMENT

Under the Utah Uniform Securities Act, an Act in and of itself, the penalty provision for securities violations contains a clause without a counterpart in the criminal code. Section 61-1-21 of the Securities Act prohibits the penalty of imprisonment if a defendant establishes that he had no knowledge of the rule or order which had in fact been violated:

> Any person who willfully violates any provision of this chapter except Section 61-1-16, or who willfully violates any rule or order under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than $10,000 or imprisoned not more than three years, or both. No person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned or complaint filed under this chapter more than five years after the alleged violation.

Utah Code Ann. § 61-1-21 (1988) (emphasis added)[2]; cf. Utah Code Ann. §§ 76-3-203; 76-3-301.

Mr. Boaz acknowledges the three year period of imprisonment penalty, but, because of the accompanying (underscored) clause, the

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2. The 1988 version of 61-1-21, quoted above, has since been modified although the language of the underscored clause has remained the same. Compare Utah Code Ann. § 61-1-21 (1988), with Utah Code Ann. § 61-1-21 (Supp. 1994). The 1988 version applies here because of the date of the offense, a fact duly noted by both parties. See generally (R 461-71). Unless otherwise indicated, all statutory references are from 1988 (amendments since 1988, if any, would not alter the analysis).

penalty of imprisonment would be inapplicable to his unknowing violation.

"When faced with a question of statutory construction, this court first examines the plain language of the statute." State v. Larsen, 865 P.2d 1355 (Utah 1993). While the plain language here allows for imprisonment, the very next statutory clause prohibits a term of imprisonment if there is "no knowledge of the rule or order." Utah Code Ann. § 61-1-21. The "imprisonment" language initially stated should not be read in isolation. See Utah State Road Comm'n v. Friberg, 687 P.2d 821, 831 (Utah 1984) ("terms of the related code provision should be construed in a harmonious fashion"); M. Silver v. Auditing Div. of the State Tax Comm'n, 820 P.2d 912, 914 (Utah 1991) ("In construing the statute, we follow the rule that the terms of a statute should not be interpreted in a piecemeal fashion, but as a whole").

Importantly, the accompanying "no imprisonment" prohibition does not dispense with punishment altogether nor does it preclude the imposition of fines. Rather, incarceration is the only punishment listed which may be avoided. Utah Code Ann. § 61-1-21; accord (R 601) (appointed counsel for Mr. Boaz conceded that punishments other than imprisonment "would accordingly be appropriate").

The legislature's decision to include "imprisonment" and "no imprisonment" text in the same penalty statute, Utah Code Ann. § 61-1-21, together with recent case law on the meaning of

"willful", State v. Larsen, 865 P.2d 1355 (Utah 1993), reveals that a securities violation committed willfully may not necessarily have been also committed with "knowledge of the rule or order". Otherwise, if no distinction existed between the willful requirement and such knowledge, the "no knowledge of the rule or order" clause would be rendered superfluous. Utah Code Ann. § 61-1-21. By statute, a willful violation does not have to include a term of imprisonment, id., and a willful violation may occur without "knowledge of the rule or order." Id.

In Larsen, a securities fraud case involving provisions similar to the ones involved here, defendant Larsen asked the "court to interpret 'willfully' as requiring 'scienter,' the intent to deceive, manipulate, or defraud, . . ." Larsen, 865 P.2d at 1358 (citation omitted). Finding a lack of support in the plain language of the statute, the supreme court rejected Larsen's arguments. "If the legislature had wanted scienter for perceived public policy reasons, it could have included that requirement. It did not, and we will not." Id. at 1360. The court refused "to engraft a judicially created intent requirement upon the plain language of a criminal statute." Id. at 1358.[3]

According to the court: "An individual must act willfully to be criminally liable under the statute. This means that the

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3. Defendant Larsen's claimed parallels to federal law were unpersuasive because "he fails to recognize that the Utah legislature has not required the courts to interpret the Utah Uniform Securities Act in lockstep with federal decisions." Larsen, 865 P.2d at 1360.

prosecution must prove beyond a reasonable doubt that the accused 'desire[d] to engage in the conduct or cause[d] the result.'" Id. at 1360 (quoting Utah Code Ann. § 76-2-103). The court's willful definition is consistent with the penalty provision of the securities act in that a violation may have been committed willfully (i.e. through a desire to engage in the conduct or cause the result), but that the violation need not also have been committed with "knowledge of the rule or the order." Utah Code Ann. § 61-1-21.

In essence, such knowledge under the securities fraud penalty statute includes three different scenarios. One, a person has knowledge of the rule or order and commits no wrongdoing. No penalty applies.

Two, a person has knowledge of the rule or order and willfully commits a violation. Such a violator "desire[s] to engage in the conduct or cause[s] the result" and the violator does so while cognizant of the applicable (violated) rule or order. Imprisonment is appropriate for such a willful and knowledgeable violation. A fine also may apply. Id.

And three, a person has no knowledge of the rule or order, but willfully commits a violation in the manner defined by our supreme court. 865 P.2d at 1360. A person who acts willfully but without knowledge of the rule or order is less culpable than a person in the second situation. The less culpable offender still remains subject to punishment, however, albeit the penalty of imprisonment does not apply. Utah Code Ann. § 61-1-21. Mr. Boaz falls under the last example.

During the entry of plea proceedings, held on February 11, 1994, Mr. Boaz's plea included a "willful" violation but only as that term was defined by the Larsen case.[4] (R 574-75).

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4. During the plea proceedings, after the court recounted the factual basis for the involved offense, Mr. Boaz's willful acknowledgment was clarified for the court:

> [DEFENSE COUNSEL]: Your Honor, just for clarification as we discussed under the C. Dean Larsen opinion of willful and the way that term is defined. Mr. Boaz would admit that he acted willfully, not that he acted with any scienter or any intent to defraud. He is not admitting that.
>
> THE COURT: Have you had a discussion with Mr. Boaz regarding, you probably have, the distinction between "willful" in terms of an intent to defraud versus "willful" being defined as the desire to engage in the conduct itself?
>
> [DEFENSE COUNSEL]: We have. . . . In fact, also as we entered these negotiations we received from the state a comment which I think was most helpful in encouraging Mr. Boaz to accept this. That is, [the State] indicated to us to remind Mr. Boaz this court 4 that deals in fraud is not the common law fraud that we are often hearing about and talking about, but a securities fraud situation as alleged which has the willfulness to something other than, I suppose, the intent element that is commonly referred to. I believe that it is that comment and explanation, as much as anything, that assisted Mr. Boaz to distinguish between what he was being charged with and how the Court was interpreting that from the Larsen opinion and prepared him to enter this plea today.
>
> THE COURT: Mr. Boaz, with that amplification, did you engage in that conduct willful[ly]?
>
> MR. BOAZ: Yes, as it has been defined.

(R 574-75). The limited nature of the willful standard again was emphasized for the other counts and also during the sentencing proceedings. (R 576); see supra Statement of Facts (quoting [R 599-601]).

Acknowledging nothing more than "willful" acts (i.e. "the desire to engage in the conduct itself"), Mr. Boaz's representations established "no knowledge of the rule or order". (R 575). Consequently, even though such willful conduct subjected him to punishment, the penalties listed by statute may not include imprisonment. Utah Code Ann. § 61-1-21.

M. Silver v. Auditing Div. of the State Tax Comm'n, 820 P.2d 912, 914 (Utah 1991), lends analogous support. In Silver, the defendant appealed a tax penalty on the grounds that his mental state (or lack thereof) did not fall under the proscriptions of a tax penalty statute. Silver argued that the mandate of the statute, which required proof of an "intent to evade", was not satisfied by merely acknowledging not "do[ing] that which the law, in fact, may require." See id. at 915. "Silver concede[d] that he did not intend to file [tax] returns, but that this state of mind was based on an understanding, apparently mistaken, that he was not obligated to file under state or federal law." Id. at 914. He argued that an intent greater than a conscious objective was required before the penalty applied.

On appeal, the supreme court agreed. A person who acts intentionally may not necessarily have acted with the intent "to avoid a legal requirement with which the actor knows he or she is obligated to comply[.]" See id. at 915 (emphasis added). A willful violation, standing alone, was not enough to invoke the involved penalty. But see id. at 916 ("It may be that Silver is liable for some other, lesser penalty, a point we do not address[.]").

The principles in Silver apply equally to the case at bar.[5] In both cases, there is an acknowledged "conscious objective or desire to accomplish the prohibited end." Compare 820 P.2d at 914 ("Silver concedes that he did not intend to file returns"), with (R 600) (Mr. Boaz's act or omission was "just the desire to engage in the conduct or cause the result"). For the involved penalty to apply, in both cases "it is not sufficient that the actor merely intends not to do that which the law, in fact, may require." Silver, 820 P.2d at 915 (emphasis added) (the $1,000 tax penalty is inapplicable if a willful violator does not also evade legal requirements with which he "knows he . . . is obligated to comply");

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5. The main thrust of the court's analysis in Silver is reprinted below:

> [The tax penalty statute] requires that one have an "intent to evade" a tax or legal requirement before one is exposed to the penalty of up to $1,000 imposed by that section. The usual meaning of the term "intent" is that one must have a conscious objective or desire to accomplish the prohibited end. The object of the required intent under [the tax penalty statute] is "to evade" the requirements of the tax laws. "Evade" is defined as avoidance of something by effort, skill, dexterity, ccntrivance, subterfuge, ingenuity, or artifice. We read the term "intent to evade," then, to require a conscious desire to avoid a legal requirement with which the actor knows he or she is obligated to comply; it is not sufficient that the actor merely intends not to do that which the law, in fact, may require. In short, an intent not to file a tax return, even though required to law to file, is an "intent to evade" only if the actor is aware that he or she is legally required to file.

M. Silver v. Auditing Div. of the State Tax Comm'n, 820 P.2d 912, 915 (Utah 1991) (citations omitted).

cf. (R 599-601) (emphasis added) (the securities law penalty of imprisonment is inapplicable if a willful violator does not also act with "knowledge of the [violated] rule or order"). Although other penalties potentially apply, the punishment appealed should not be allowed. Compare Silver, 820 P.2d at 916 ($1,000 tax penalty was disallowed), with (R 599-601) (order of imprisonment should be disallowed).

The "no knowledge" provision barring imprisonment is a securities law penalty limitation unlike anything contained in the punishment section of the criminal code. Compare Utah Code Ann. § 61-1-21, with Utah Code Ann. §§ 76-3-201(5)(a); 76-3-203; 76-3-301. If the legislature had intended for the imprisonment penalties statutes to all be the same, it would have done so. See Larsen, 865 P.2d at 1360 ("It did not, and we will not").

Under the minimum mandatory statutes, for instance, the sentences range in terms of high, medium, or low severity. Utah Code Ann. § 76-3-201(5)(a). Yet, even when persuaded by a showing of mitigating circumstances (a clause marginally similar in function to the "no knowledge" securities provision), the court's minimum sentence still must include a term of imprisonment. Utah Code Ann. § 76-3-201(5)(d). Unlike under the securities provision, a "no knowledge" showing for minimum mandatory crimes would not provide a basis for avoiding incarceration.

Under the criminal code indeterminate sentencing statutes, varying terms of imprisonment are set forth, but there is no accompanying provision prohibiting imprisonment if persons show no

"knowledge of the rule or order." See, e.g., Utah Code Ann. § 76-3-203(3). Imprisonment may be stayed or avoided through other means, Utah Code Ann. § 76-3-201 (probation), although no provision provides the opportunity afforded by the "no knowledge" securities clause. Utah Code Ann. § 61-1-21.

At best, once a court imposes imprisonment for an indeterminate offense,[6] the Parole Board may later rely on a "no knowledge" showing in order to shorten further periods of incarceration. Cf. Utah Code Ann. § 76-3-202(5) (if so persuaded, the Board may exercise its discretion and discharge the inmate). The court itself, however, is not bound statutorily once such knowledge is presented under the criminal code indeterminate sentencing scheme. Utah Code Ann. § 76-3-203. Limitations on incarceration are only provided by the securities law penalty provision. Utah Code Ann. § 61-1-21.

In fact, the "no knowledge" securities provision leaves the court with no choice in the matter. Imprisonment is simply not a

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6. The third degree felony section of the indeterminate sentencing statute provides "for a term not to exceed five years", Utah Code Ann. § 76-3-203(3), although the bar and bench have both typically referred to the term as "zero-to-five years". See (R 609). More precisely, however, the statutory language requires a felon to "be sentenced to imprisonment for an indeterminate term . . . [not to exceed five years.]" Utah Code Ann. § 76-3-203; see also Utah Code Ann. § 61-1-21 (terms for "not more than three years" are provided for). In other words, at least one day of the prison term must be served before the Parole Board is theoretically empowered to release him. In any event, if "a term not to exceed five years" is imposed, there is no accompanying provision completely prohibiting imprisonment in the manner provided by the "no knowledge" securities statute. Compare Utah Code Ann. § 76-3-203(3), with Utah Code Ann. § 61-1-21.

viable securities law sentencing alternative if "no knowledge" is shown. Utah Code Ann. § 61-1-21. By comparison, the court's power under the criminal code indeterminate sentencing scheme is more discretionary. Utah Code Ann. §§ 76-3-201; 76-3-203. Imprisonment may or may not be appropriate, Utah Code Ann. § 76-3-201(1)(c), with the ultimate determination depending on considerations other than the securities "no knowledge" provision.

In short,[7] the "no knowledge" clause of the securities penalty section provides the exception to the general rule of imprisonment under the criminal code. If the legislature did not want a "no knowledge" showing to be a securities law limitation on the sentence of imprisonment, it would have omitted such limiting language from its provision. The plain language of the securities law penalty provision should be followed.

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7. Mr. Boaz does not ignore the long standing principle that ignorance of the law is no excuse. See Smith v. Morris, 690 P.2d 560 (Utah 1984); (R 602). This codified principle, however, is entirely consistent with the legislature's drafting of the "no knowledge" securities statute. Compare Utah Code Ann. § 76-2-304, with Utah Code Ann. § 61-1-21.

The securities provision (which contains "penalties" in its title) pertains to the sentencing context. Utah Code Ann. § 61-1-21. The text specifically refers to fines and terms of imprisonment (if applicable). Id. "Upon conviction", securities violators are subject to its provisions. Id. By contrast, the "ignorance of law" provision refers to (in)applicable defenses to crimes. See Utah Code Ann. § 76-2-304. Limitations to a court's sentence are not at issue, cf. Utah Code Ann. § 61-1-21; rather, the "ignorance" focus is on whether it serves as a defense to "any prosecution" of a crime. Utah Code Ann. § 76-2-304.

CONCLUSION

Mr. Boaz respectfully requests this Court to vacate the lower court's sentencing order of incarceration. Punishments other than imprisonment may have been appropriately imposed below, but the court's order of imprisonment violates the limitations contained in the securities penalty statute.

SUBMITTED this 21st day of February, 1995.

Ron S. Fujino

RONALD S. FUJINO
Attorney for Defendant/Appellant

RICHARD G. UDAY
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that I have caused eight copies of the foregoing to be delivered to the Utah Court of Appeals, 230 South 500 East, Suite 400, Salt Lake City, Utah 84102, and two copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 21st day of February, 1995.

Ron S. Fujino

RONALD S. FUJINO

DELIVERED by _____

this _____ day of February, 1995.

_____

ADDENDUM A

61-1-1. Fraud unlawful.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

(1) employ any device, scheme, or artifice to defraud;

(2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

61-1-3. Licensing of broker-dealers, agents, and investment advisers.

(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

(2) (a) It is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed. The license of an agent is not effective during any period when he is not associated with a particular broker-dealer licensed under this chapter or a particular issuer.

(b) When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the division.

61-1-7. Registration before sale.

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the security or transaction is exempted under Section 61-1-14.

61-1-21. Penalties for violations — Limitation of prosecutions.

Any person who willfully violates any provision of this chapter except Section 61-1-16, or who willfully violates any rule or order under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than $10,000 or imprisoned not more than three years, or both. No person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned or complaint filed under this chapter more than five years after the alleged violation.

76-2-103. Definitions of "intentionally, or with intent or willfully"; "knowingly, or with knowledge"; "recklessly, or maliciously"; and "criminal negligence or criminally negligent."

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

76-2-304. Ignorance or mistake of fact or law.

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Aggravation or mitigation of crimes with mandatory sentences — Resentencing.

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal from or disqualification of public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment; or

(e) to death.

(5) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation, or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) The court in determining a just sentence shall be guided by sentencing rules regarding aggravation and mitigation promulgated by the Judicial Council.

76-3-202. Paroled persons — Termination or discharge from sentence — Time served on parole — Discretion of Board of Pardons.

(1) Every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, or in the case of a person convicted of violating Section 76-5-301.1, Subsection 76-5-302(1)(e), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, upon completion of ten years on parole outside of confinement and without violation, be terminated from his sentence unless the person is earlier terminated by the Board of Pardons. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons, but not to exceed the maximum term.

(2) Any person paroled following a former parole revocation may not be discharged from his sentence until either:

(a) he has served three years on parole outside of confinement and without violation, or in the case of a person convicted of violating Section 76-5-301.1, Subsection 76-5-302(1)(e), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, ten years on parole outside of confinement and without violation;

(b) his maximum sentence has expired; or

(c) the Board of Pardons so orders.

(3) (a) All time served on parole, outside of confinement and without violation constitutes service of the total sentence but does not preclude the requirement of serving a three-year or ten-year, as the case may be, parole term outside of confinement and without violation.

(b) Any time a person spends outside of confinement after commission of a parole violation does not constitute service of the total sentence unless the person is exonerated at a hearing to revoke the parole.

(c) Any time spent in confinement awaiting a hearing before the Board of Pardons or a decision by the board concerning revocation of parole constitutes service of the sentence. In the case of exoneration by the board, the time spent shall be included in computing the total parole term.

(4) When any parolee without authority from the Board of Pardons absents himself from the state or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(5) This section does not preclude the Board of Pardons from paroling or discharging an inmate at any time within the discretion of the Board of Pardons unless otherwise specifically provided by law.

76-3-203. Felony conviction — Indeterminate term of imprisonment — Increase of sentence if firearm used.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, for a term at not less than five years, unless otherwise specifically provided by law, and which may be for life but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;

(2) In the case of a felony of the second degree, for a term at not less than one year nor more than 15 years but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;

(3) In the case of a felony of the third degree, for a term not to exceed five years but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

76-3-301. Fines of persons.

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) $10,000 when the conviction is of a felony of the first degree or second degree;

(b) $5,000 when the conviction is of a felony of the third degree;

(c) $2,500 when the conviction is of a class A misdemeanor;

(d) $1,000 when the conviction is of a class B misdemeanor;

(e) $500 when the conviction is of a class C misdemeanor or infraction; and

(f) any greater amounts specifically authorized by statute.

(2) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.